

REMARKS

This Amendment is responsive to the Office Action dated January 17, 2008 in the above identified application.

In view of the above amendments and the following remarks, we respectfully request favorable reexamination and allowance of the pending claims.

Status of the Application

- Claims **54-60** were cancelled previously;
- Claims **1-53 and 61-96** are pending in the application; and
- Of the pending claims, claims **1, 50, 61-67, 82-84, 86-88, 95 and 96** are independent.

In view of the above amendments and the following remarks, the applicants respectfully request favorable re-examination and allowance of all of the pending claims.

The 35 U.S.C. §102(e) Rejections

Claims **50 and 64-66** stand rejected as anticipated by Walker et al., U.S. Patent No. 6,108,639 (hereinafter "Walker"). We respectfully traverse the Section 102(e) rejections.

Walker pertains to systems and methods for processing the sale of goods to buyers who submitted a purchase offer for the purchase of such goods (see Walker, col. 1, lines 15-20). In particular, the system is directed to buyers desiring to purchase collectible items, such as coins, stamps comic books, baseball cards, and the like. Accordingly, a buyer who wishes to purchase a collectible item transmits a conditional purchase offer (CPO), which is processed to determine whether one of multiple sellers is willing to accept the CPO. The CPO is a binding offer that contains one or more buyer defined conditions at a buyer defined price. If any seller accepts the CPO and delivers goods that comply with the buyer's CPO, the buyer is bound on behalf of that seller to form a legally binding contract (Walker, col. 3, lines 23-38).

It should be noted that Figs. 10A to 10D of Walker together form a flowchart that describes an exemplary collectible CPO evaluation process 1000 that can be implemented by a central controller (Walker, col. 4, lines 62-64). The process includes receiving a CPO from a buyer,

providing the CPO to potential sellers, and a determining whether any one seller is willing to accept the CPO (see Walker, col. 9, lines 62-66).

Accordingly, Applicants respectfully submit that the processes disclosed by Walker are not analogous to those of a traditional auction because a traditional auction includes multiple buyers who place bids for an item that has been put up for bid by a seller. In contrast, Walker's methods pertain to one buyer who makes an offer (via the CPO) to multiple potential sellers. Thus, the system disclosed by Walker is **buyer-driven**, wherein the buyer dictates the terms of the offer, in contrast to a seller-driven auction, wherein the seller of an item can place restrictions (such as a minimum starting bid) on the auction process.

Pending claims **50, 64, 65 and 66** pertain to a method, apparatus, and computer readable medium for *providing a penalty to a bidder in an auction*. Each includes the limitation of *determining, before the auction closes, based on a penalty rule, whether the bidder is to receive a penalty*. If such a determination is made, claim **50** requires transmitting an indication that the bidder is to receive a penalty. Such a process **encourages competitive bidding behavior** during an auction session because bidders recognize that they may incur a **penalty** for certain bidding behaviors. The penalty also discourages non-competitive bidding behavior (See, for example, the application at page 2, lines 28-33).

The Examiner contends, in the paragraph spanning pages 3 and 4 of the Office Action, that two cited portions of Walker disclose such operation. But the first cited portion of Walker (at Col. 16, lines 5-12) is part of claim 8, which recites a method of processing the sale of a secondary market item that includes **obtaining a purchase offer from a customer**. In particular, the cited portion of claim 8 states:

“identifying one or more rules from at least one potential seller of said secondary market item, each of said rules containing one or more seller-defined restrictions;
comparing said purchase offer to said rules to determine whether an accepting seller is willing to accept said purchase offer **if said customer-defined condition** satisfies said seller-defined restrictions of at least one of said rules;” (Emphasis Added)

Applicants respectfully submit that the above cited verbiage does not concern penalty rules. Instead, this section of claim 8 requires comparing a purchase offer to seller-defined restrictions (which could be associated with items in the seller's collection or based on the seller's screening

criteria—see Walker, claims 11 and 12) to determine if a seller is willing to accept the purchase offer (that is, a customer defined condition satisfies the seller-defined restrictions of at least one rule). There is absolutely no hint of imposing a penalty.

The second portion of Walker cited by the Examiner recites:

“It is noted that if the buyer *ultimately* fails to purchase the requested item *once the CPO is accepted* by a seller, the buyer can be charged a fee or a penalty. In this manner, the offer is guaranteed with a general purpose account, for example, using a line of credit on a credit card account.” (Emphasis added; Col. 10, lines 10-15)

It is clear that the second cited portion of Walker states that the buyer can be charged a penalty if the buyer *ultimately* fails to purchase the requested item *after the CPO is accepted*. But the Examiner continues to assert that:

“...the penalty is implemented before the close of the auction since the transaction is still being processed during step 1008, therefore meaning that the auction has not yet closed since transactions involving the auction need to be carried out [actual purchase of the item].” (Office Action, paragraph 16 on pages 20-21).

This statement is incorrect for several reasons. First, as explained above, the processes taught by Walker are dissimilar to a traditional auction. Second, step 1008 of Fig. 10A merely pertains to receiving information from the buyer that includes conditions, price, expiration date and a general-purpose account identifier. Such information concerns the initial steps involved in Walker's CPO evaluation process. Step 1008 of Fig. 10A does not contain any indication of a penalty. Third, we submit that when the CPO is accepted the transaction is terminated. Thus, any penalty that might be imposed is applied *after* the termination of the transaction (if the buyer doesn't pay the bill).

But the Examiner continues:

“...Walker '639 shows that the penalty is applied once the CPO is accepted by a seller, and before the purchase of the item. The penalty is not applied after the customer is bind (sic, “bound”) to the purchase by accepting the CPO. As shown in col. 18, lines 3-19... once a customer accepts the CPO, the auction is still active until it is determined that the item satisfies a description and once this happens, then the customer is bind to purchase the item [this is the close of the auction]. The auction is not closed once the seller accepts the CPO since the items still need to satisfy a description. It is not right after the CPO is accepted that the auction is closed, but after the “determination” step. In addition, it is true

that col. 16, lines 5-12... shows rules applied to determine if the seller will accept the customer's CPO, however, these rules are also applied as penalty rules since penalties are directly linked to the CPO and implemented upon acceptance of the CPO. Therefore, if rules are applied to determine if a CPO is accepted, the penalty that goes along with this particular CPO is also implemented through application of these rules. In addition, Col. 12, line 59-Col. 13, line 7 shows the validation of an item under a CPO. Once the item under the CPO has been validated, Walker et al '639 shows that the item is purchased by crediting the seller's credit card, and then the offer database is updated to record the final seller and final item before the program terminates. This section proves that Walker et al '639 supports the fact that the auction is not terminated once the CPO is accepted, but after the item under CPO is validated, and the buyer is bind to purchase or has purchased the item." (see Office Action, paragraph 16 on pages 20-21; emphasis as it appears in the original).

In the above quotation from the Office Action, the close of the "auction" of Walker (if Walker can be said to disclose an auction at all) is defined by the Examiner as being when the customer (or buyer) is bound to purchase the item. We agree. This condition is satisfied when the seller accepts the CPO. It is after this point that a penalty could be imposed, if the customer ultimately fails to pay for the item (See Walker, col. 10, lines 9-15).

The second cited portion of Walker confirms that it is the seller, not the buyer, who is the party that accepts the CPO. Accordingly, we submit that col. 10, lines 10-13 of Walker supports Applicants' position that the penalty is not "determined before the auction closes", but is in fact determined only after the customer is bound to purchase the item from a seller. The 'auction' cannot be considered "open" once the buyer is bound to purchase the 'auctioned' item.

As best understood, the Examiner advocates that even after a "bidder" wins an "auction" in Walker, the auction never closes if the bidder refuses to pay for the item. Not only is such an interpretation incorrect, Applicants submit that such an interpretation of Walker is wholly unsupported and thus without merit. Nothing in Walker (or in any other cited reference) teaches or even suggests that an auction never closes if the winning bidder does not pay. An auction for an item is closed when a winning bidder is chosen. Payment for the item is a separate issue. Walker does not teach or suggest otherwise.

Furthermore, there is no support for the Examiner's convenient assertion that Walker's CPO rules "...are also applied as penalty rules since penalties are directly linked to the CPO and

implemented upon acceptance of the CPO.” (see quoted passages above from the Office Action at page 21). Such a statement is unsupported by the disclosure of Walker.

Accordingly, Applicants respectfully submit that Walker fails to support the Examiner’s assertions because it does not disclose determining, before an auction closes, whether the bidder is subject to a penalty. Thus, claims **50 and 64 -66** are not anticipated by Walker.

In view of the above remarks, we respectfully request withdrawal of the Section 102(e) rejections.

The Section 103(a) Rejections

Claims **1-3, 4, 5-8, 9, 10-17, 18, 19, 20-22, 23, 24-26, 27, 28-31, 32, 33, 34, 35, 36, 37-42, 43, 44, 45, 46, 47, 48, 49, 51-53 61-63, 67-83, 84-89, 90 and 91-96** have been rejected as being unpatentable over combinations of Walker in view of Franchi, U.S. Patent No. 5,770,533 (hereinafter “Franchi”) and in view of Fisher et al., U.S. Patent No. 6,243,691 (hereinafter “Fisher”), and in view of Scholldorf, EP 0,411,748 A2 (hereinafter “Scholldorf”), and in view of Baraldi, “Efficient parallel algorithms for the minimum cost flow problem (hereinafter “Baraldi”), and in view of Warren Publishing, “Budget Leaves Out Spectrum Fee” (hereinafter “Warren Publishing”), and in view of Walker, U.S. Patent No. 6,049,778 (hereinafter “Walker ‘778”) and in view of Barzilai, U.S. Patent No. 6,012,045 (hereinafter “Barzilai”) and in view of Kuo, U.S. Patent No. 6,363,365 (hereinafter “Kuo”), and in view of Pionchon, U.S. Patent No. 5,200,890 (hereinafter “Pionchon”). Applicants traverse all of the Section 103(a) rejections for the reasons articulated below.

1. Claims 1-3, 5-8, 10-17, 20-22, 24-26, 28-31, 37-42, 47, 61-63, 84-89 and 91-96 Are Patentably Distinct Over Walker and Franchi

Claims **1-3, 5-8, 10-17, 20-22, 24-26, 28-31, 37-42, 47, 61-63, 84-89 and 91-96** have been rejected as being unpatentable over Walker in view of Franchi. Applicants traverse.

Of the claims in this grouping, claims **1, 61-63, 84, 86, 87, 88, 95 and 96** are independent. Of these independent claims, claim **1** recites a method for providing a reward to a bidder, and independent claims **61** (a means-plus function claim), **62** (an apparatus claim), and **63** (a computer-readable medium claim) each correspond to claim **1**. Similarly, independent claim **84** is a method

claim, and independent claim **86** (a computer-readable medium claim) and independent claim **87** (an apparatus claim) correspond to claim **84**. In addition, independent claim **88** is a method claim, and independent claim **95** (a computer-readable medium claim) and independent claim **96** (an apparatus claim) correspond to claim **88**. Accordingly, presented below are separate arguments that concern each of these three groupings.

1A. Claims 1-3, 5-8, 10-17, 20-22, 24-26, 28-31, 37-42, 47, 61-63

Claim **1** is illustrative of independent claims **1 and 61-63**, and includes the following:

*determining, based on a reward rule, whether the bidder is qualified to receive a reward **other than the product**; and*

transmitting, to the bidder if the bidder is qualified, an indication that the bidder is qualified to receive the reward.

Each of independent claims **1 and 61-63** generally requires that a *bidder may receive a reward other than the product*. We respectfully submit that none of the references suggests this feature.

The Examiner recognizes that these limitations are not disclosed by Walker (Office Action, page 6). But the Examiner also contends that “Walker... does disclose receiving the product as the reward in the abstract, lines 8-11” (Final Action, page 5). We disagree. Lines 8-11 of the Abstract of Walker recites:

“If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer’s CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract.”

There is absolutely no mention of a “reward” here. Thus, interpreting this portion of Walker in the manner suggested is unreasonable. Rather, this cited passage means what it says: if the seller accepts the CPO and delivers the goods according to the buyer’s terms (which are in the CPO), then the buyer is obligated to enter into a binding contract.

In an attempt to cure the deficiencies of Walker, the Office Action asserts that:

- (1) Franchi discloses receiving a reward other than the product;
- (2) Franchi is in an analogous art; and

(3) it would have been obvious to combine Franchi with Walker.

Applicants respectfully traverse.

Franchi discloses an open architecture casino operating system for controlling the flow of funds and for monitoring gambling activities (see Franchi, Abstract). Thus, Franchi does not pertain to auctions, and does not concern or describe bidding in auction sessions. Accordingly, Franchi does not teach or suggest *determining whether the bidder is qualified to receive a reward other than a product*.

Claim 41 of Franchi was cited by the Examiner to support the three assertions outlined above (Office Action, page 6). But claim 41 recites:

"41. The casino operating system according to claim 39, wherein said player console further notifies the player when the player wins a door prize **randomly awarded** by said central computer." (Emphasis added; claim 41 at col. 28, lines 46-48 of Franchi)

Applicants also are aware that Franchi discusses a "door prize" in the specification:

"Optional features that may be provided on the player console [of a slot machine] include: an indication signal located on the control panel [of the player console] to indicate that the player has won a **random** door prize [sic., "prize"] offered by the casino **as a perk to frequent gamblers**." (Emphasis added; see Franchi, col. 8, lines 18 – 22)

In view of the above citations, Applicants submit that it is clear that Franchi only discloses randomly awarding prizes to a gambler. As best understood, the completely dissimilar casino system of Franchi has been cited to support arguments that Franchi discloses a randomly awarded prize, and that since this prize is not being bid upon in an auction, that it is "a reward other than the product [subject to bidding during an auction session]". But Franchi has ***nothing to do with auctions or bidding***, so there is no *product which is subject to bidding during an auction session*. Thus, Franchi cannot disclose *a reward other than the product subject to bidding*, as required by the pending claims.

Furthermore, Applicants respectfully submit that Franchi is not in the field of auctions, and is not reasonably pertinent to the particular problem with which the inventor was concerned. Thus, since Franchi has nothing whatsoever to do with auctions or even bidding, it would not be used by one skilled in the art to solve a problem concerning auctions. No substantial evidence has been provided to the contrary.

Moreover, Franchi does not provide an award "as an incentive to continue participating" as asserted on page 6 of the Office Action. In fact, Franchi describes the random prize is a "perk" that is awarded to frequent gamblers (see highlighted quoted text of Franchi, above). Thus, it is clear that the gamblers aren't required to continue gambling or to continue participating at any particular rate of play in order to receive such a prize because it is awarded randomly.

The Examiner contends on pages 22 and 23 of the Office Action that Franchi is analogous art because it "deals with a casino system", and that terms such as "player betting data" and "gambling data" proves that bidding is implemented. The Examiner seems to be confusing "bidding" with "betting". These are two different terms that connote very different actions. "Bidding" is associated with an auction and may be defined as collecting offers from participants for an item that has been placed up for auction and ultimately awarding the item to the participant who placed the highest bid (which is a promise to pay that amount in exchange for the item), whereas "betting" is associated with games of chance and is defined as making a wager with someone on an uncertain outcome. Consequently, the Applicants continue to respectfully submit that Franchi is non-analogous art, and therefore would not be combined with Walker by one skilled in the art as suggested.

Furthermore, the following motivation to modify and combine Walker and Franchi has been proposed on pages 22-23 of the Office Action:

"... the combination of these references is valid since both references disclose the implementation of conditional offers in determining a reward. Walker et al. '639 specifically discloses a conditional purchase offer for receiving a (sic., "and") processing individual conditional purchase offers from buyers for different products. Franchi discloses conditional offers through gambling via betting card by a player. As disclosed by Miriam Webster's Dictionary, a bet is defined as "a choice made by consideration of probabilities", where in this case, the consideration of probabilities are conditions. Since probabilities are conditional, and betting includes making a choice or offer via probabilities, the act of betting is conditional. In addition, another conditional offer is shown in Franchi where it discloses different betting options for using the betting card as shown in Col. 9, lines 16-21. First, the user has the option to play solely from the credit balance on the card such that no coins are involved, or the layer can have the machine issue coins from the balance on the card into a coin tray, and then use these coins to play the slot machine. In the first case, the user can play the slot machine on the condition that he or she used no coins. In the second case, the user can play the slot machine on the condition that he or she uses only coins."

We disagree. Walker and Franchi do not both disclose "the implementation of conditional offers in determining a reward" such that their combination is justified. Walker's system involves

matching a conditional purchase offer created by a buyer to at least one seller of a product. There is no teaching or suggestion concerning *receiving a reward other than the product in response to the bid*. Second, betting is not equivalent to bidding as explained above, even if both are based on “probabilities”. For example, a gambler places a bet (risking money) to play a card game of chance, wherein a good outcome is winning the hand that was dealt to the gambler and receiving a payoff in money (or chips), and a bad outcome is losing the bet (and thus losing the risk money). In contrast, a participant of a conventional auction places one or more bids and then obtains the product if his bid was the highest, but the participant does not lose anything (does not pay) if his bid is not the high bid. Thus, Applicants respectfully assert that bidding for a product in an auction and placing a wager while gambling *are two distinctly different activities*, and are not equivalent. Consequently, one skilled in the art would not have been motivated to combine Walker and Franchi in the manner proposed.

Furthermore, the Examiner has failed to resolve (or even identify) the level of ordinary skill in the pertinent art as required by the Supreme Court. Graham v. John Deere Co., 383 U.S. 1, 17 (1966). Having failed to resolve the level of ordinary skill in the art in the record, applicants assert that the Examiner is unable to determine “would have been obvious to one of ordinary skill in the business art” at the time of the invention.

In view of the above amendments and remarks, applicants respectfully request withdrawal of the Section 103(a) rejections of independent claims **1 and 61-63**. In addition, since claims **2, 3, 5-8, 10-17, 20-22, 24-26, 28-31, 37-42 and 47** all directly or indirectly depend on claim **1**, these dependent claims should be allowable for at least the same reasons.

Furthermore, claim **17** was rejected as unpatentable over Walker in view of Official Notice, because it allegedly would have been obvious to one of ordinary skill: “for the bid to be the first received bid because it is traditional in auctions to receive bids in the order that they come in” (See page 8 of the Office Action). But in the context of dependent claim **17** and independent claim **1**, Applicants respectfully dispute that it would have been obvious for one skilled in the art to transmit an indication (to the first bidder) that he is qualified to receive the reward. Thus, Applicants respectfully request a reference that documents such, so that we may be better prepared to respond to this rejection. Given that no such reference currently exists in the record and that Applicants dispute that such a practice was known at the time of the invention, we respectfully traverse this rejection.

In addition, with regard to dependent claim **41**, we traverse the Examiner's assertion that Walker teaches or suggests *providing the reward to the bidder*. The cited portion of Walker does not teach or suggest such a process. Instead, the cited portion of Walker merely recites: "providing said secondary market item to said customer if said secondary market item satisfies said condition." (Walker, col. 16, lines 15-16). The condition at issue here concerns a "customer-defined condition" that is compared to seller-defined restrictions, and claim 8 continues with the step of determining if the item also satisfies the condition. If so, the item is provided. There is absolutely no mention of a reward in claim 8 of Walker. Thus, claim **41** is patentably distinct thereover.

1B. Claims 84-87

Claims **84-87** generally concern a method, a computer readable medium and apparatus for:

retrieving required auction session conditions;

determining that the required auction session conditions are satisfied by current auction data;

retrieving offer recipient rules associated with bidders participating in the auction session;

determining, based on the retrieved offer recipient rules, which of the bidders are qualified to receive an offer message; and

transmitting an offer message to at least one qualified bidder.

The Examiner has cited Walker at col. 16, lines 5-16 as allegedly disclosing all of the above limitations of claim **84**. But that section of Walker corresponds to a part of claim 8 which recites:

identifying one or more rules from at least one potential seller of said secondary market item, each of said rules containing one or more seller-defined restrictions;

comparing said purchase offer to said rules to determine whether an accepting seller is willing to accept said purchase offer if said customer-defined condition satisfies said seller-defined restrictions of at least one of said rules;

determining if said secondary market item provided by said accepting seller satisfies said condition; and

providing said secondary market item to said customer if said

secondary market item satisfies said condition. (Walker, col. 16, lines 5-16)

Applicants respectfully submit that Walker does not teach or suggest *retrieving offer recipient rules associated with bidders participating in the auction session*, nor does Walker teach or suggest *determining, based on the retrieved offer recipient rules, which of the bidders are qualified to receive an offer message*, nor does it suggest or teach *transmitting an offer message to at least one qualified bidder*. The Office Action is devoid of any application of Franchi to claims 84-87 (see Office Action, pages 5-6), and we respectfully assert that Franchi does not cure the defects of Walker anyway. Accordingly, since neither Walker nor Franchi, either alone or in combination, teaches or suggests the recited claim elements highlighted above, claims 84-87 are patentably distinct thereover.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a)rejection.

1C. Claims 88, 89 and 91-96

Claims **88, 89 and 91-96** concern a method, a computer readable medium and apparatus for:

receiving a bid for a product from a first bidder during an auction session;

determining, based on a reward rule, whether the first bidder is qualified to receive a reward other than the product;

transmitting, if the first bidder is qualified, an indication that the first bidder is qualified to receive the reward;

receiving a bid for the product from a second bidder during the auction session;

determining, based on the reward rule, whether the second bidder is qualified to receive a reward other than the product;

transmitting, if the second bidder is qualified, an indication that the second bidder is qualified to receive the reward; and

transmitting an indication to the first bidder revoking the qualification of the first bidder to receive the reward.

Walker at col. 16, lines 5-16 was again cited for allegedly disclosing all of the above limitations of claim **88** with the exception of the concept of receiving a reward other than the

product (See Office Action, pages 5-6). As explained above, col. 16, lines 5-16 of Walker corresponds to a portion of claim 8, as follows:

identifying one or more rules from at least one potential seller of said secondary market item, each of said rules containing one or more seller-defined restrictions;

comparing said purchase offer to said rules to determine whether an accepting seller is willing to accept said purchase offer if said customer-defined condition satisfies said seller-defined restrictions of at least one of said rules;

determining if said secondary market item provided by said accepting seller satisfies said condition; and

providing said secondary market item to said customer if said secondary market item satisfies said condition. (Walker, col. 16, lines 5-16)

Applicants respectfully submit that Walker does not teach or suggest the steps of *determining, based on a reward rule, whether the first bidder is qualified to receive a reward other than the product; nor does it teach; transmitting, if the first bidder is qualified, an indication that the first bidder is qualified to receive the reward; receiving a bid for the product from a second bidder during the auction session; determining, based on the reward rule, whether the second bidder is qualified to receive a reward other than the product; transmitting, if the second bidder is qualified, an indication that the second bidder is qualified to receive the reward; and transmitting an indication to the first bidder revoking the qualification of the first bidder to receive the reward* as required by claims **88, 89 and 91-96**. The Office Action is devoid of any application of Franchi to claims **88, 89 and 91-96** (see Office Action, pages 5-6), other than to assert that Franchi discloses receiving a reward other than the product, which is not claimed here. Furthermore, we respectfully assert that Franchi does not cure the defects of Walker anyway. Accordingly, since neither Walker nor Franchi, either alone or in combination, teaches or suggests the recited claim elements highlighted above, claims **88, 89 and 91-96** are patentably distinct thereover.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a)rejection.

2. Claims 15, 16, 23, 28-30 and 46 Are Patentably Distinct Over Walker in view of Franchi and further in view of Fisher

Claims **15, 16, 23, 28-30 and 46** have been rejected as unpatentable over Walker in view of Franchi and further in view of Fisher. Applicants traverse this Section 103(a) rejection.

The Examiner admits that neither Walker nor Franchi specifically discloses:

“wherein the reward rule comprises a condition that the bid from the bidder is greater than the greatest bid by a certain percentage/currency value/that the bid exceeds a prior bid by a predetermined value...” (Office Action, paragraph 7 on pages 9-10).

Fisher was then cited for allegedly disclosing such conditions, but the cited portion of Fisher states:

“FIG. 9 illustrates the Standard Auction format where bid manager 55, shown in FIG. 6, determines which bids to mark as successful or unsuccessful, as shown in step 66 in FIG. 7. Bid manager 55 begins by sorting 91 the bids by amount of the bid. If there are bids remaining to be processed, determined at step 97, the highest remaining bid is selected 98 to be checked. If the bid is below the minimum bid allowed for the particular merchandise item, as determined at step 93, the bid is marked 99 as unsuccessful. If not, the bid is checked 94 to see if the quantity may be satisfied. A bid may be satisfied if the quantity of the item bid upon is available. This information is available from auction database 29. If not, then the bid is marked 99 as unsuccessful.” (Fisher, col. 9, lines 43-56)

Applicants respectfully submit that Fisher does not cure the deficiencies of Walker and Franchi that were recognized by the Examiner. In particular, this passage of Fisher does not suggest or teach **a reward rule** at all, much less a reward rule that includes a condition that the bid from the bidder is greater than the greatest bid *by a predetermined percentage* (claim **15**), or that the bid from the bidder is greater than the greatest bid *by a predetermined currency value* (claim **16**), or that the bid from the bidder is greater than the greatest bid *by a predetermined value* (claim **23**). Furthermore, Fisher does not concern determining that the bidder is *qualified to receive the reward* if the bid is greater than the prior bid *by a predetermined value* (claim **28**), or determining that the bidder is *qualified to receive the reward* if the number of bids is at least equal to the *predetermined number of bids* (claim **30**). Furthermore, Fisher does not cure the deficiencies of Walker and Franchi discussed above in prior sections of this paper, and thus claims **15, 16, 23, 28-**

30 and 46, which all directly or indirectly depend from claim **1**, should be allowable for at least the same reasons as claim **1**.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

3. Claims 32 and 33 Are Patentably Distinct Over Walker in view of Franchi and further in view of Scholldorf (EPO 0,411,748)

Claims **32 and 33** have been rejected as unpatentable over Walker in view of Franchi and further in view of Scholldorf. Applicants traverse this Section 103(a) rejection.

As an initial matter, we disagree with the Examiner's statement that Walker discloses a bidder submitting a bid in the abstract on lines 5-8. No such description is given there; in fact lines 5-8 of Walker state:

"The collectible CPO management system processes each received CPO to determine whether one or more sellers are willing to accept (sic., 'accept') a given collectible CPO." (Walker, Abstract, lines 5-8)

Applicants respectfully submit that the above quoted portion of Walker means what it says, and does not implicate an "auction". Rather, it describes processing of conditional purchase offers (CPO's) from buyers who wish to obtain a collectible item to determine if any particular CPO matches terms that have been made available by one or more sellers. We respectfully assert that to interpret such behavior as equivalent to an auction is unreasonable and incorrect.

Turning to the rejection of claims **32 and 33**, the Examiner admits that neither Walker nor Franchi specifically discloses measuring a time between the bid and a previous bid from a second bidder, and then establishing a reward rule that depends on whether the time between the bids is either greater than a predetermined value (claim **32**), or less than a predetermined value (claim **33**). We also note that Scholldorf pertains to an anonymous matching system for automatically matching buyers and sellers with risk minimization in the context of trading instruments, such as foreign exchange currencies (See Scholldorf, page 3, lines 1-5 and page 5, line 5 to page 6, line 15). We dispute that the cited section of Scholldorf (page 9, line 46 to page 10, line 11) teaches or suggests anything about "time stamping" as suggested by the Examiner. However, Applicants recognize that such trading systems typically track the time and date of, for example, stock trades or currency

trades. But even if the processes described by Scholldorf time stamp trades, this reference does not teach or suggest *establishing a reward rule* that depends upon whether the *time between bids* is greater than, or less than, a predetermined value, as claimed. Thus, we submit that Walker, Franchi, or Scholldorf, either alone or in combination, fails to teach or suggest such operation. In addition, claims **32 and 33** each depend on claim **1**, which is patentably distinct from the cited art as explained above. Accordingly, claims **32 and 33** should also be patentable for at least the same reasons.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

4. Claim 43 Is Patentably Distinct Over Walker in view of Franchi and further in view of the Baraldi Publication

Claim **43** has been rejected as unpatentable over Walker in view of Franchi and further in view of Baraldi. We traverse as claim **43** depends upon claim **1**, which is patentably distinct over the cited art as explained above. Accordingly, claim **43** should be allowable for at least the same reasons.

We also traverse the Examiner's statement that Walker discloses an "auction environment" for the reasons set forth above in Section 3, which we incorporate herein by reference for the sake of brevity. Furthermore, although Applicants concede that Baraldi describes the use of a parallel auction algorithm in a shared memory multiprocessor environment, we disagree with the Examiner's statements on page 12 of the Office Action that (1) it would have been obvious for one of skill in the art to determine the payment from a parallel auction "because this payment price would be close to the average price", and (2) that "Parallel auctions are commonly used as backbones for auctions that presently take place". There is no support for such statements, and thus such observations by the Examiner are not substantial evidence of record. Accordingly, claim **43** is patentably distinct from Walker and Baraldi, either taken alone or in combination.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

5. Claims 44 and 45 Are Patentably Distinct Over Walker in view of Franchi and further in view of Warren Publishing

Claims **44 and 45** have been rejected as unpatentable over Walker in view of Franchi and further in view of Warren Publishing. Applicants traverse this Section 103(a) rejection.

First, Applicants continue to traverse the Examiner's statement that Walker discloses an "auction environment" for the reasons set forth above in Section 3, which we incorporate herein in its entirety by reference for the sake of brevity. Second, Warren Publishing does not suggest or teach *receiving, from the bidder, a payment to extend the auction session* as claimed by claim **44**. The Examiner has apparently misread Warren Publishing, as the paragraph cited therein (paragraph 1; see paragraph 10 on page 13 of the Office Action) recites the following:

"Broadcasters and other holders of radio spectrum got a reprieve from Administration's proposed budget for FY 1996, which doesn't include spectrum fee. Instead, budget asked that FCC's auction authority be extended and that Commission be allowed to charge user fees that could total 4.8 billion by FY 2000. FCC and Commerce Dept. asked for double-digit budget increases." (See first paragraph of Warren Publishing reference).

Nowhere in this portion of Warren Publishing is it even suggested that holders of radio spectrum provided any payment to extend an auction. Thus, Warren Publishing does not teach or suggest receiving a payment to extend an auction from a bidder. Third, claims **44 and 45** depend on claim **1**, which is patentably distinct over the cited references. Accordingly, claims **44 and 45** should be allowable for at least the same reasons. Therefore, in view of the above remarks, we submit that claims **44 and 45** are patentably distinct over Walker, Franchi and Warren Publishing, either taken alone or in combination.

Furthermore, claim **45** was rejected as unpatentable over Walker, Franchi, Warren Publishing and further in view of "Official Notice", because it was alleged that it is old and well known in the auction art to determine the payment from a parallel auction, and thus would have been obvious to one of ordinary skill: "to determine the payment from a parallel auction because this payment price would be close to the average price." (See paragraph 10 on page 13 of the Office Action). First, we respectfully dispute that it is old and well known to determine a payment from a parallel auction. Second, in the context of dependent claims **44, 45** and independent claim **1**, we respectfully dispute that it would have been obvious for one skilled in the art to receive a payment to extend the auction from the bidder wherein the payment is determined from a parallel auction.

Consequently, Applicants respectfully request a reference that documents such operation, so that we may be better prepared to respond to this rejection. Given that no such reference currently exists in the record and that Applicants dispute that such a practice was known at the time of the invention, we respectfully traverse this rejection.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

6. Claims 4, 9, 18 and 19 Are Patentably Distinct Over Walker in view of Franchi and further in view of Walker ‘778

Claims 4, 9, 18 and 19 have been rejected as unpatentable over Walker in view of Franchi and further in view of Walker ‘778. Applicants traverse this Section 103(a) rejection.

The Examiner admits that neither Walker nor Franchi teaches a reward with a value of currency, but contends that Walker teaches “issuing a reward” in the Abstract, at lines 8-11. We respectfully disagree with such a statement, because no such description is given there; in fact lines 8-11 of Walker state:

“If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer’s CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract.” (Walker, Abstract, lines 8-11)

This cited portion of Walker is totally **devoid** of any mention of a reward, much less a reward that comprises a value of currency, or any other value recited by claims 4, 9, 18 and 19. Applicants respectfully submit that the above quoted portion of Walker means what it says, that when a seller accepts a CPO and delivers the goods, then the buyer is legally bound on behalf of the accepting seller. Thus, we respectfully assert that to interpret such a process as equivalent to issuing a reward is not only unreasonable, it is incorrect.

Furthermore, Walker ‘778 pertains to administering a reward program that includes registered purchasers, wherein a measurement of product success is calculated, and upon attaining a predetermined level of success then a set of “early-adopter” purchasers are rewarded (see Walker ‘778, col. 2, lines 38-53). Thus, the methods disclosed in Walker ‘778 do not necessarily apply to auctions, and in fact are geared towards encouraging the early purchase of new products by purchasers (col. 2, lines 53-56). Accordingly, we traverse the statement that Walker ‘788 is

analogous art for the purpose of showing that monetary rewards can be given in an auction environment. Accordingly, one skilled in the art would not have reviewed and combined the disclosure of Walker '778 with Walker and Franchi. Furthermore, even if these references were combined, the method recited by claim 1 would not be the result, as none of these references teaches or suggest *receiving a reward other than the product in response to the bid* as recited by claim 1 (as explained above in Section 1 herein). Accordingly, claims **4, 9, 18 and 19**, which all directly or indirectly depend upon claim 1, are patentably distinct for at least the same reasons as claim 1.

The Examiner also admits that neither Walker nor Franchi teaches the method of dependent claim 19, *wherein the reward corresponds to a difference between the bid and a greatest bid*. However, the Examiner again contends that Walker discloses issuing a reward in the abstract, at lines 8-11. Applicants again point out that such a statement is incorrect, for the same reasons recited above, which will not be repeated here for the sake of brevity. The Examiner also cites a portion of Walker '778 that allegedly teaches the recitations of claim 19, but that cited portion states:

“Such an amount may be a refund of the purchase price of a portion thereof, or an amount of money based on the difference between the corresponding purchase price and a current product price.” (Walker '778, col. 10, lines 38-41)

We respectfully submit that the reward being discussed in this portion of Walker '778 has nothing whatsoever to do with a difference between a bid and a greatest bid, as required by claim 19. Thus, claim 19 is patentably distinct over the cited art.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

7. Claims 27, 34, 35, 36, 48 and 49 Are Patentably Distinct Over Walker in view of Franchi and further in view of Barzilai

Claims **27, 34, 35, 36, 48 and 49** have been rejected as unpatentable over Walker in view of Franchi and further in view of Barzilai. Applicants traverse this Section 103(a) rejection.

The Examiner admits that Walker and Franchi both fail to teach comparing a participation history of the bidder and the second bidder, or any of the other methods recited by these claims. But it is again asserted that Walker discloses a bidder participating in an auction-like environment in the abstract on lines 1-5. No such description is given there; in fact lines 1-5 of Walker state:

“A collectible conditional purchase offer (CPO) management system is disclosed for receiving and processing individual CPO’s from buyers for one or more collectibles, such as coins, stamps, art prints, comic books, baseball cards, jewelry, or other used or secondary market goods.”
(Walker, Abstract, lines 1-5)

Applicants respectfully submit that the above quoted portion of Walker means what it says, and does not implicate an “auction environment”. Rather, it describes a conditional purchase offer (CPO) management system, for receiving and processing CPO’s. We again respectfully assert that the Examiner has misconstrued Walker, and that interpreting the process described in Walker’s Abstract as equivalent to an auction is unreasonable and incorrect.

Barzilai was cited as allegedly disclosing the methods recited by claims **27, 34, 35, 36, 48 and 49**. However, the portion of Barzilai cited as support for the Examiner’s contentions is as follows:

“The system operator may also want to know how many bids have been made on this product during the current bid cycle and how many bids have been made on this product for all bid cycles. The average accepted dollar amount of the last bid cycle is important as well as the average open bid amount for this bid cycle. The call frequency is also important data. The system operator, if offering a large quantity of similar goods, would like to know how successful this product has been in the past. By compiling information regarding the total number of bids made on this product for the last bid cycle as well as the total number of bids during the current open bid cycle, the operator judges the acceptance level of this product through the electronic bid, auction and sale system.” (Barzilai, col. 12, line 67 to col. 13, line 24).

Applicants respectfully assert that this section of Barzilai fails to teach or suggest awarding a product based on the comparison of the participation history of two bidders, as claimed in claim **27**. In fact, this portion of Barzilai fails to teach or suggest establishing a reward rule based on historic participation of the bidder at all, as required by claims **34-36 and 48**. Accordingly, we submit that claims **27, 34-36 and 48** are patentably distinct over any combination of Walker, Franchi or Barzilai, either alone or in combination. Furthermore, claims **27, 34-36, 48 and 49** all

directly or indirectly depend on claim **1**, which is patentably distinct for the reasons set forth above. Thus, these claims should also be allowable for at least the same reasons as claim **1**.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

8. Claims 67-83 Are Patentably Distinct Over Walker in view of Franchi and further in view of Kuo

Claims **67-83** have been rejected as unpatentable over Walker in view of Franchi and further in view of Kuo. Applicants traverse this Section 103(a) rejection.

With regard to these claims, the Examiner states:

“As per claims 67-83, all limitations are disclosed by the combination of Walker et al. ‘639 and Franchi as disclosed above with respect to claims 1, 2, 3, 5, 11, 12, 15, 16, 37, 39, 42, 43, 46, 48 and 49 respectively, however this combination does not specifically disclose the following, but Walker et al ‘639 does teach a participant submitting a bid as a collectible conditional purchase offer in the abstract, lines 1-11” (Office Action, paragraph 13, page 17).

First, it appears that the Examiner intended to pinpoint a particular element or item that neither Walker nor Franchi discloses (“this combination does not specifically disclose”) but did not finish the thought. What is not specifically disclosed? Consequently, applicants are unsure of how to respond.

Second, we do not understand how Walker and/or Franchi teaches or suggests the following elements of claim **67**:

receiving a bid for the product with an encrypted date and time of submission of the bid from a bidder during the auction session;

decrypting the date and time of submission;

accepting the bid if the decrypted date and time of submission indicates that the bid was submitted before a scheduled closing time of the auction session;

The Examiner has simply not applied Walker and/or Franchi to such claim elements, which elements are different than what is recited by claim **1**. Thus, applicants respectfully assert that claims **67-83** are patentably distinct thereover.

Moreover, we continue to respectfully dispute that Walker teaches a participant submitting a bid in an auction environment. In particular, the Examiner again cited the abstract of Walker, which recites:

“A collectible conditional purchase offer (CPO) management system is disclosed for receiving and processing individual CPO’s from buyers for one or more collectibles, such as coins, stamps, art prints, comic books, baseball cards, jewelry, or other used or secondary market goods. The collectible CPO management system processes each received CPO to determine whether one or more sellers are willing to accept (sic., ‘accept’) a given collectible CPO. If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer’s CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract.” (Walker, Abstract, lines 1-11)

Again, we respectfully submit that the above passage means what it says, and that it does not disclose placing a bid in an auction.

Furthermore, although Kuo describes a process for securing bid proposals, no where does it teach or suggest *accepting the bid if the decrypted date and time of submission indicates that the bid was submitted before a scheduled closing time of the auction session*. The portion of Kuo cited by the Examiner that purportedly discloses such operation actually states:

The vendor generates a bid proposal or tender incorporating into it the proposal identifier (block 239), and encrypts the proposal using the session key (block 240). (Kuo, col. 7, lines 8-15)

Thus, this section of Kuo is directed to generating a bid proposal and encrypting it, and does not concern accepting a bid, much less accepting the bid if the time and date of submission indicates that it was submitted before a close of the auction session. Accordingly, we submit that Kuo does not make up for the deficiencies of Walker and Franchi explained above, and further fails to suggest or teach *accepting the bid if the decrypted date and time of submission indicates that the bid was submitted before a scheduled closing time of the auction session*. Thus, claims **67-83** are patentably distinct over the cited art.

In view of the above remarks, we respectfully request withdrawal of this Section 103(a) rejection.

9. Claims 51-53 Are Patentably Distinct Over Walker in view of Franchi and further in view of Pionchon

Claims **51-53** have been rejected as unpatentable over Walker in view of Pionchon. We traverse.

First, claims **51-53** depend on claim **50**, which is not anticipated by Walker as explained above. Therefore, claims **51-53** should be allowable for at least the same reasons.

Furthermore, as applicants have explained above, the following cited portion of Walker does **not** describe submitting a bid:

“A collectible conditional purchase offer (CPO) management system is disclosed for receiving and processing individual CPO’s from buyers for one or more collectibles, such as coins, stamps, art prints, comic books, baseball cards, jewelry, or other used or secondary market goods. The collectible CPO management system processes each received CPO to determine whether one or more sellers are willing to accept (sic., ‘accept’) a given collectible CPO. If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer’s CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract.” (Walker, Abstract, lines 1-11)

Thus, the Examiner’s assertion in paragraph 14, on page 19 of the Office Action is incorrect. The above passage means what it says, namely that a CPO management system is described that processes CPO’s from buyers and determines if one or more sellers will accept any given CPO. It does not teach or suggest placing a bid in an auction.

Pionchon does not cure the deficiencies of Walker noted above. In particular, Pionchon pertains to a computerized bridge game and is not even remotely related to an auction system. We respectfully submit that one skilled in the art would **not** review Pionchon while reviewing Walker, as these references are from non-analogous art fields. The Examiner’s explanation as to why Pionchon is considered to be analogous art to auction references is without merit, as it ignores the fact that Pionchon is only concerned with providing methods and apparatus for **a bridge game** (Pionchon, col. 1, lines 33-41). Thus, Applicants strongly assert that it is unreasonable to believe that one skilled in the art would combine Pionchon and Walker in the manner suggested by the Examiner.

Furthermore, as argued above with respect to claim **50**, Walker does not teach or suggest to provide a penalty to a bidder participating in an auction. In addition, Pionchon is directed to

providing a computer system for a bridge game, and the portion of Pionchon cited by the Examiner does not even pertain to applying a penalty to a bidder of an auction. Instead, Pionchon teaches awarding “penalty points” to the player if a bid made by a player does not match a prerecorded bid. In particular, the cited section of Pionchon states:

“In corrected assisted mode, the bidding player does not bid out loud, but merely keys in the bid by means of a keyboard 16 or the keyboard on box 12. Regardless of whether this bid matches or does not match the bid prerecorded in memory, the apparatus displays the prerecorded bid on the screens 14 and moves onto the next player. Whenever the bid made by a player does not match the prerecorded bid, the apparatus awards penalty points to the player and these are tallied at the end of the game.” (Kuo, col. 7, lines 15-24)

Thus, this portion of Pionchon describes how, in a correction assisted mode of operation, the computer system operates to award penalty points to the player when his bid, *which is part of a bridge game*, does not match a prerecorded bid. Such penalty points are tallied at the end of the bridge game. Consequently, Applicants cannot even fathom how that which is disclosed by Pionchon could possibly be combined with Walker. Moreover, even if Pionchon and Walker were somehow combined, the method recited by claims **50 and 51-53** would not be the result. Instead, a CPO system that includes a provision for awarding penalty points would be the result.

The Examiner also contends:

“It would have been obvious to one of ordinary skill... to apply the penalty rule and make the bidder ineligible to continue if the bid is less than a current high bid because the lower bid cannot qualify for an award. Since the opposite of an award is a penalty, the penalty rule would be applicable in this case. (Office Action, paragraph 14, page 19)

Such tortured logic of what constitutes a penalty is not substantial evidence of record, as it is a self-serving statement has no basis in fact. Neither of Walker nor Pionchon teaches or suggests such operation. Applicants respectfully submit that the Examiner has merely recited what Applicants have claimed and has force-fit Walker and Pionchon to the claim language. But such reasoning is impermissible hindsight reasons, and cannot stand. Accordingly, we respectfully submit that claims **51-53** are patentably distinct over Walker and Pionchon, whether taken alone or in combination.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

10. Claim 90 Is Patentably Distinct Over Walker in view of Franchi and further in view of Pionchon

Claim 90 has been rejected as unpatentable over Walker in view of Franchi and further in view of Pionchon. Applicants traverse.

First, the Examiner apparently meant to state that Walker and Franchi do not teach *assessing a penalty to a first bidder if the bid of the first bidder is less than the current bid*, as generally recited by claim 90. However, Applicants can only guess that this is the case because it has not been clearly stated in the Office Action (see in paragraph 15 on page 19 of the Office Action).

Second, as we explained several times above, the following portion of Walker does **not** describe submitting a bid:

“A collectible conditional purchase offer (CPO) management system is disclosed for receiving and processing individual CPO’s from buyers for one or more collectibles, such as coins, stamps, art prints, comic books, baseball cards, jewelry, or other used or secondary market goods. The collectible CPO management system processes each received CPO to determine whether one or more sellers are willing to accept (sic., ‘accept’) a given collectible CPO. If a seller accepts a given CPO, and ultimately delivers goods complying with the buyer’s CPO, the buyer is bound on behalf of the accepting seller, to form a legally binding contract.” (Walker, Abstract, lines 1-11)

Thus, the Examiner’s assertion in paragraph 15, on page 19 of the Office Action is **incorrect**. As explained above, the above passage means what it says, namely that a CPO management system is described that processes CPO’s from buyers and determines if one or more sellers will accept any given CPO. It does not teach or suggest placing a bid in an auction.

Third, Pionchon does not cure the deficiencies of Walker noted above. In particular, Pionchon pertains to a computerized bridge game and has absolutely **no connection** to an auction system. We therefore respectfully continue to assert that one skilled in the art would **not** review Pionchon and Walker, as these references are from non-analogous art fields. We believe that the Examiner’s explanation why Pionchon is analogous art to auction references is without merit, as

explained above, and incorporate our arguments made in the previous section above by reference herein for the purposes of brevity.

Fourth, as argued above with respect to claims **50 and 51-53**, Walker does not provide a penalty to a bidder participating in an auction. Instead, Pionchon teaches awarding “penalty points” to the player if a bid made by a player does not match a prerecorded bid. The cited section of Pionchon does not support the Examiner’s contention, as it states:

“In corrected assisted mode, the bidding player does not bid out loud, but merely keys in the bid by means of a keyboard 16 or the keyboard on box 12. Regardless of whether this bid matches or does not match the bid prerecorded in memory, the apparatus displays the prerecorded bid on the screens 14 and moves onto the next player. Whenever the bid made by a player does not match the prerecorded bid, the apparatus awards penalty points to the player and these are tallied at the end of the game.”
(Pionchon, col. 7, lines 15-24)

Accordingly, this portion of Pionchon merely describes how a correction assisted mode operates to award penalty points to the player when his bid, *which is part of a bridge game*, does not match a prerecorded bid. We again submit that Pionchon would not and could not be combined with Walker, and even if they were somehow combined, the method recited by claim **90** would not be the result.

Fifth, claim **90** depends upon claim **88**, which is patentably distinct over the cited art. Thus claim **90** should be allowable for at least the same reasons as claim **88**.

In view of the above remarks, Applicants respectfully request withdrawal of this Section 103(a) rejection.

Conclusion

For the foregoing reasons it is submitted that all of the claims are in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application, or if the Examiner has any suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Stephan Filipek at telephone number 203-461-7252 or via electronic mail at sfilipek@walkerdigital.com.

Permission To Charge Required Fees

Applicants do not believe that any fees are due for filing this response, as it is being filed within three months of the January 17, 2008 mailing date of the Office Action. However, should any fees be necessary to continue prosecution of the present application or to make this response timely, please charge any such fee to our Deposit Account No. 50-0271. Please also credit any overpayment to Deposit Account No. 50-0271.

Respectfully submitted,

April 17, 2008
Date

/Stephan J. Filipek, Reg. No. 33,384/
Stephan J. Filipek
Attorney for Applicants
Registration No. 33,384
Walker Digital, LLC
sfilipek@walkerdigital.com
(203) 461-7252 /voice
(203) 461-7300 /fax